IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 222 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

LATE SHRI C.D. LASKARI,L.H.SMTTILOTMA C. LASKARI

Appearance:
MR AKHIL QURESHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

At the instance of the revenue, the following question of law has been referred to us for answer :-

"Whether, on the facts and in the circumstances of the case, the share income of Smt. Tilothama C. Leskeri in the firm of M/s Jabal Industries could be clubbed with the total income of the assessee by invoking the provisions of Section 64(1) of the Income-tax Act, 1961 ?"

2. The assessee was a partner in the partnership firm of M/s Jabal Industries representing as HUF. The assessee's wife was also a partner in the said firm. In the assessment proceedings, the department's stand was that she was a partner in the said firm in representative capacity as karta of the family. The department sought to include the income of his wife in the income of the assessee by invoking the provisions of Section 64(1) of the Income-tax Act, 1961. Based on the above fact, the above question has been referred to us as the Tribunal held that such income of the wife is not liable to be included in the income of the assessee. The question is squarely answered by the Supreme Court in the case of CIT vs. Shri Om Prakash & Ors., (1999) 238 ITR 1044. The Supreme Court has held that the word "individual" in Section 64(1)(i) and (ii) cannot be construed to include the karta of an Hindu Undivided Family. Construing the provision in the manner as aforesaid, the income of the wife from a firm in which the assessee is a partner as karta of the HUF, is not includible in the income of the assessee. Relying on the decision of the Supreme Court in CIT vs. Shri Om Prakash (Supra), the question has to be answered against the revenue and in favour of the assessee.

The reference is answered accordingly, but we make no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-